CLERK'S COPY.

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~402~~ 15

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF WASHINGTON

vs.

H. G. SEABORN

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED NOVEMBER 26, 1929

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 492

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF WASHINGTON

vs.

H. G. SEABORN

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from U. S. C. C. A., Ninth Circuit	1	1
Statement of case	1	1
Questions certified	3	2
Judges' signatures	4	3

83191—29

1 In United States Circuit Court of Appeals for the Ninth Circuit

BURNS POE, COLLECTOR OF INTERNAL REVENUE for the District of Washington, appellant
vs.
H. G. SEABORN, APPELLEE
No. 5885.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

CERTIFICATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT UNDER SECTION 239 OF THE JUDICIAL CODE

Filed Nov. 18, 1929

Statement of case

H. G. Seaborn and Charlotte A. Seaborn are husband and wife and both are citizens of the United States. They have maintained their domicile in the State of Washington at all times since their marriage December 11, 1902, and all property, real and personal, now owned by them, including the income hereinafter mentioned, is, and during the year 1927 was, their community property under the laws of that State. During that year the gross income of the community amounted to the sum of $38,448.17, and, after making the deductions allowed by law, the husband and wife made separate returns of this community income, each reporting substantially one-half thereof. All taxes due and payable on these returns have been fully paid, and it is admitted that all income taxes due from either husband or wife for the year 1927 were fully paid on these separate returns, if as a matter of law they had a lawful right to make such separate returns under section 210 of the revenue act of February 26,
1926, which provides that a certain tax shall be levied, col-
2 lected, and paid for each taxable year upon the net income of every individual. 44 Stat. 21; 26 U. S. C. A. sec. 2012. The collector of internal revenue for the district of Washington, for the purpose of making a test case, refused to accept the separate returns thus made by the husband and wife and made a reassessment, imposing the tax on the husband alone for the entire income of the community for that year. The husband paid the additional tax thus imposed under protest and has taken all steps required by law to enable him to maintain an action against the collector of internal revenue for the recovery of the additional tax thus imposed and collected. The present action was thereupon instituted by the husband to recover the difference between the amount of the tax as reassessed and paid and the amount of the tax if computed on

the separate returns made by the husband and wife. From a judgment in favor of the plaintiff for the amount claimed the United States has appealed.

Section 6890 of Remington's Compiled Statutes of the State of Washington, 1922, defines the separate property of the husband, the next section defines the separate property of the wife, and section 6892 defines community property as follows:

"Property not acquired or owned as prescribed in the next two preceding sections, or acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of the community personal property, with a like power of disposition as he has of his separate property, except that he shall not devise by will more than one-half thereof."

As already stated, it is admitted that the income here involved was the community property of the husband and wife as defined in the latter section. It is the established rule of decision in the highest court of the State of Washington that the wife during the life of the husband, as well as upon a dissolution of the marriage, has a vested and definite interest and title in the community property, real and personal, equal in all respects to the interest and title of
3 the husband therein. Rucker v. Blair, 32 F. (2d) 222. It is likewise the established rule of decision in that State that the power given to the husband of management and control of the community personal property is a naked power in trust for the community. It is not a power coupled with an interest and gives the husband no proprietary right or interest in the one-half of the community property, real or personal, which belongs to the wife. It differs in no respect from an agency created by a general power of attorney or other contract of agency. Holyoke v. Jackson, 3 Wash. Ter. 235; Schramm v. Steele, 97 Wash. 309.

Ever since the year 1920 husbands and wives domiciled in the State of Washington have made separate returns of their community income, each reporting one-half thereof, and taxes have at all times been paid on such returns. This practice has at all times been fully recognized and sanctioned by the opinions of the Attorney General of the United States and by the rulings of the Secretary of the Treasury and other taxing officers of the Government. 32 Opinions of Attorneys General 298, 435. As already stated, an exception was made to the general rule in the present instance for the sole purpose of making a test case.

For a proper decision of the above-entitled cause, now pending on appeal and duly submitted for consideration, instructions are respectfully requested of the Supreme Court on the following important and controlling question of law, concerning which we are in doubt, viz:

Questions certified

First. May a husband and wife domiciled in the State of Washington make separate returns of community income, each reporting

one-half thereof, and pay taxes on such returns, in accordance with the practice which has prevailed in that State for the past eight years under the rulings and sanction of the Attorney Gen-
4 eral, the Secretary of the Treasury and other taxing officers of the Government? Or, putting the question in another form—

Second. Must the husband make return and pay the tax on the entire community income of the husband and wife in that State, as suggested, if not decided by the Supreme Court in United States v. Robbins, 269 U. S. 315?

Dated November 18, 1929.

FRANK H. RUDKIN,
FRANK S. DIETRICH,
CURTIS D. WILBUR,
U. S. Circuit Judges, Ninth Circuit.

[File indorsement omitted.]

A true copy.
Attest, November 18, 1929:
[SEAL.] PAUL P. O'BRIEN, *Clerk.*

[Indorsement on cover:] File No. 34,623. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 492. Burns Poe, Collector of Internal Revenue for the District of Washington, vs. H. G. Seaborn. (Certificate.) Filed November 26, 1929. File No. 34,623.

○